

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VERNON PAUL VANCE, individually

Plaintiff,

v.

PIERCE COUNTY, et al.

Defendants.

CASE NO. 13-5860 RJB

ORDER ON MOTION FOR
REMAND

This matter comes before the Court on the Plaintiff's Motion for Remand. Dkt. 14. The Court has considered the pleadings filed regarding the motion and the remaining file. For the reasons set forth below, the motion to remand should be granted.

I. FACTS

This case was filed in Pierce County, Washington Superior Court on December 3, 2012. Dkt. 10-1, at 3. Plaintiff asserted claims for false arrest, defamation, malicious prosecution, "gross negligence and deliberate indifference," negligent hiring, negligent retention, negligent supervision, and negligent infliction of emotional distress. Dkt. 10-1, at 14-15. Defendant Pierce County, Washington, was notified, by letters dated December 14, 2012 and May 17, 2012,

1 that Plaintiff was waiving all federal claims. Dkt. 16, at 4 and 6. On September 3, 2013,
 2 Plaintiff amended his Complaint and added the Washington State Department of Corrections and
 3 the Washington State Patrol as Defendants. Dkt. 1, at 8. He also added state law claims for
 4 negligence, outrage, and invasion of privacy. *Id.*, at 20-21.

5 On October 1, 2013, the case was removed to this Court by the Defendants. Dkt. 1.
 6 Plaintiff now moves for an order of remand to Pierce County, Washington Superior Court. Dkt.
 7 14. Defendants oppose the motion. Dkts. 18 and 20.

8 **II. DISCUSSION**

9 Under 28 U.S.C. § 1331: “[t]he district courts shall have original jurisdiction of all civil
 10 actions arising under the Constitution, laws, or treaties of the United States.” “Federal
 11 jurisdiction exists only when a federal question is presented on the face of a properly pleaded
 12 complaint. The mere existence of a federal defense to a state law claim is insufficient to create
 13 federal jurisdiction over a case.” *U.S. v. City of Arcata*, 629 F.3d 986, 990 (9th Cir.
 14 2010)(*internal citations omitted*). Further, to protect the jurisdiction of state courts, removal
 15 jurisdiction is strictly construed in favor of remand. *Harris v. Bankers Life and Cas. Co.*, 425
 16 F.3d 689, 698 (9th Cir. 2005) (*citing Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09
 17 (1941)). Any doubt as to the right of removal must be resolved in favor of remand. *Gaus v.*
 18 *Miles*, 980 F.2d 564, 566 (9th Cir. 1992). The strong presumption against removal jurisdiction
 19 means that the defendant always has the burden of establishing that removal is proper. *Id.*

20 The Motion for Remand (Dkt. 14) should be granted, and the case should be remanded to
 21 Pierce County, Washington Superior Court. There is no federal question presented in the
 22 Complaint. Defendants’ assertion that certain defenses may be raised pursuant to a federal
 23 statute does not create federal question subject matter jurisdiction for this Court. *City of Arcata*,

at 990. Defendants' argument that Plaintiff's claim for "deliberate indifference" is "clearly" a federal claim is not persuasive. Dkts. 18 and 20. Although "deliberate indifference" is the state of mind requirement for various constitutional violations which could be brought pursuant to 42 U.S.C. § 1983, Plaintiff, in his Reply, states that he is not bringing such a claim, and is, in fact, waiving all federal claims. Dkt. 21. Defendants' argument, that Plaintiff's claim for attorney's fees confers federal jurisdiction here, is likewise unavailing. Plaintiff accurately points out that attorney's fees may be available under state law (Dkt. 21) and is asserting his claim for attorney's fees under Washington law. Further, there is no showing that this Court has diversity jurisdiction. This case should be remanded to Pierce County, Washington Superior Court.

Plaintiff further seeks an award of attorney's fees and costs. Dkts. 14 and 21. Attorney's fees should not be awarded at this time.

III. ORDER

Accordingly, it is hereby **ORDERED** that:

- Plaintiff's Motion to Remand (Dkt. 14) is **GRANTED**.
- This case is **REMANDED** to the Pierce County, Washington Superior Court; and
- Plaintiff's motion for an award of attorney's fees and costs (Dkt. 14) **IS DENIED**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 25th day of November, 2013.



ROBERT J. BRYAN
United States District Judge